

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
v.)
)
ANDRE M. MILLER,)
)
 Defendant.)

Case No. 12-00151-01-CR-W-BP

REPORT AND RECOMMENDATION

On May 22, 2012, the Grand Jury returned a one-count indictment against defendant Andre M. Miller. The indictment charges that on May 1, 2012, defendant Miller, having been convicted of a crime punishable by imprisonment for a term exceeding one year, possessed a firearm.

On October 18, 2012, defense counsel filed a Motion for Psychiatric Examination requesting that defendant undergo an examination and that a report be filed with the Court concerning “[w]hether the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him, or to assist properly in his defense.” (Motion for Psychiatric Examination (doc #28) at 3) On November 8, 2012, the Court ordered that defendant undergo a psychiatric examination.

Defendant Miller was examined at the Metropolitan Detention Center in Los Angeles, California. On February 19, 2013, a Forensic Evaluation was filed with the Court. The Forensic Evaluation was prepared by Tiffany K. Brown, Psy.D., Forensic Psychologist, and reviewed by Lisa Hope, Psy.D., Chief/Forensic Psychologist. The evaluation concluded:

OPINION ON THE ISSUE OF PRESENT COMPETENCY TO STAND TRIAL

Based on the information available, there is no objective evidence to indicate Mr. Miller suffers from signs or symptoms of a major mental disorder, such as an affective disorder (e.g., Bipolar Disorder), psychotic disorder (e.g., Schizophrenia), or an organic disorder. Although there is evidence to indicate Mr. Miller suffers from an anxiety disorder, the signs and symptoms do not impair his present ability to understand the nature and consequences of the court proceedings against him, or his ability to properly assist counsel in his defense. The defendant was able to relate a coherent history and did not appear to have any significant difficulties in expressive (i.e., speaking) or receptive (i.e., understanding) language. He did not appear to experience any difficulties in communicating his thoughts to the evaluator. He was able to offer relevant and meaningful information to this evaluator regarding both historical data and legal matters. He provided appropriate responses to the questions posed to him.

(Doc #34 at 18-19)

On March 20, 2013, a hearing was held before the undersigned with respect to defendant's competency to stand trial. The parties stipulated that if the psychologists were called to testify, their testimony would be the same as that contained in the Forensic Evaluation. No other evidence was offered on the issue of defendant's competency to stand trial.

The only evidence before the Court on the issue of defendant's competency is the Forensic Evaluation (doc #34) filed on February 19, 2013. As set forth above, the psychologists at the Metropolitan Detention Center found that "[a]lthough there is evidence to indicate Mr. Miller suffers from an anxiety disorder, the signs and symptoms do not impair his present ability to understand the nature and consequences of the court proceedings against him, or his ability to properly assist counsel in his defense." (Doc #34 at 18-19)

Based upon the information before the Court, it is

RECOMMENDED that the Court, after making an independent review of the record and applicable law, enter an order finding that defendant Andre M. Miller is not currently suffering

from a mental disease or defect which would prevent him from understanding the nature and consequences of the proceedings against him or assisting in his defense.

Counsel are reminded they have fourteen days from the date of this Report and Recommendation within which to file and serve objections. A failure to file and serve timely objections shall bar an attack on appeal of the factual findings in this Report and Recommendation which are accepted or adopted by the district judge, except on grounds of plain error or manifest injustice.

/s/ **JOHN T. MAUGHMER**
JOHN T. MAUGHMER
UNITED STATES MAGISTRATE JUDGE